



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2023-0479; FRL-11425-01-R9]

Air Plan Approval; California; California Air Resources Board; Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the California Air Resources Board (CARB) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from vapor recovery systems of gasoline cargo tanks. We are proposing to approve a local rule to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *FEDERAL REGISTER*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2023-0479 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional

submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: La Kenya Evans-Hopper, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3245 or by email at evanshopper.lakenya@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. The State’s Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was amended by the local air agency and submitted by the California Air Resources Board.

TABLE 1 - SUBMITTED RULE

Local Agency	Regulation or Provision	Regulation Title or Subject	Amended	Submitted
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Local Agency	Regulation or Provision	Regulation Title or Subject	Amended	Submitted
CARB	California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014, except sub-sections (a) – (d) ¹	Certification of Vapor Recovery Systems for Cargo Tanks	07/12/23 ²	09/13/23
CARB	Certification Procedure CP-204	Certification Procedure for Vapor Recovery Systems of Cargo Tanks	07/12/23	09/13/23

Pursuant to CAA section 110(k)(1)(B) and 40 CFR part 51 appendix V, the EPA determined that the submittal for CARB’s California Code of Regulations (CCR), Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014 (Section 94014) met the completeness criteria on September 25, 2023.

B. Are there other versions of this rule?

On April 5, 2022 (87 FR 19631), we finalized a limited approval and limited disapproval of the July 25, 2013, version of Section 94014 into the SIP, including those regulatory provisions we identified as deficient. As part of our limited disapproval of Section 94014, CARB was required to submit revisions to correct the deficiencies. CARB subsequently adopted revisions to Section 94014 on July 12, 2023, and submitted them to the EPA on September 13, 2023. In this action we are proposing to approve the July 12, 2023, version of Section 94014 and, if finalized, it would replace the previously approved version of this rule in the SIP.

C. What is the purpose of the submitted rule revisions?

Emissions of VOCs contribute to the production of ground-level ozone, smog, which

¹ Letter dated September 21, 2023, from Michael Benjamin, Chief, Air Quality Planning and Science Division, to Martha Guzman, Regional Administrator, EPA Region IX. The letter states that Section 94014, sub-sections (a) – (d), that describe fee provisions, were inadvertently submitted to the EPA. Therefore, the CARB will withdraw Section 94014, sub-sections (a) – (d), from consideration for inclusion into the SIP. The EPA will not act on Section 94014, sub-sections (a) – (d) in this rulemaking.

² The California Air Resources Board amended the introductory paragraph of 17 California Code of Regulations Section 94014 on July 12, 2023, and the changed was filed with Thomson Reuters Westlaw on August 29, 2023. Therefore, the amendment for Section 94014 will be recorded as July 12, 2023.

harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. The regulations covered by this action are intended to limit VOC emissions from cargo tank trucks used to transport gasoline from bulk terminals to gasoline dispensing facilities (e.g., gas stations). VOC emissions can be emitted from cargo tanks when gasoline is being loaded or unloaded from the cargo tank. CARB requires the use of a gasoline vapor recovery system to significantly reduce the amount of VOC emitted during the gasoline loading and unloading process.

Section 41954 of the California Health and Safety Code requires that CARB “[inspect] and [test]...certified vapor recovery systems upon installation during the permit process and [conduct] regular inspections to check that systems are operating as certified.” Section 94014 allows gasoline vapor recovery systems for cargo tanks to be certified in accordance with Certification Procedure CP-204, “Certification Procedure for Vapor Recovery Systems of Cargo Tanks” (CP-204). Section 94014 then incorporates CP-204 by reference. CP-204 describes the process for certifying cargo tanks with a system that recovers vapors during the loading and unloading of gasoline. This certification procedure establishes performance standards and/or specifications for cargo tanks, including trucks and trailers that transport gasoline.

As described above, on April 5, 2022 (87 FR 19631), the EPA finalized a limited approval and limited disapproval of an earlier version of Section 94014 into the SIP. The basis for the limited disapproval was the allowance of CARB’s Executive Officer to approve alternate test procedures in CP-204 without EPA approval. CP-204, Section 5.4, allows the Executive Officer to approve the use of an alternative test procedure if it meets the equivalency criteria established by EPA Method 301. However, for situations where Method 301 was not directly applicable, CP-204, Section 5.4 previously allowed the CARB Executive Officer to establish other test procedures without EPA approval. The EPA identified this as an instance of unbounded director’s discretion. To correct this deficiency, CARB revised CP-204 to remove this instance of director’s discretion and submitted the revised rule to the EPA.

In addition to correcting the unbounded director's discretion, CARB also made other minor editorial improvements to CP-204. The EPA's technical support document (TSD) has more information.

II. The EPA's Evaluation and Action

A. How is the EPA evaluating the rule?

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193).

Generally, SIP rules must require reasonably available control technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source of VOCs in ozone nonattainment areas classified as "Moderate" or above (see CAA section 182(b)(2)). We determined in our April 5, 2022 final action that Section 94014 and the referenced certification procedures and test procedures implement a RACT level of stringency.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
2. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the rule meet the evaluation criteria?

This rule meets CAA requirements and is consistent with relevant guidance regarding enforceability, RACT, and SIP revisions. The revised version of CP-204 removes the provision

allowing CARB's Executive Officer to approve alternative test procedures, which the EPA identified as a deficiency in our April 5, 2022 final action. As a result, alternative test procedures for vapor recovery systems will be determined following an equivalence framework as provided by EPA Method 301. The EPA determines the removal of this language to correct the previously identified deficiency.

The EPA's TSD has more information on our evaluation.

C. The EPA's recommendations to further improve the rule

The EPA has no recommendations at this time for the next time CARB modifies the rule.

D. Public comment and proposed action

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rule because it fulfills all relevant requirements. We will accept comments from the public on this proposal until **[Insert date 30 days after date of publication in the Federal Register]**. If we take final action to approve the submitted rule, our final action will incorporate this rule into the federally enforceable SIP.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference California Air Resources Board, California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8, Article 1, Section 94014 – Certification of Vapor Recovery Systems – Cargo Tanks, excluding sub-sections (a) through (d), amended on July 12, 2023, which regulates VOCs from vapor recovery systems of gasoline cargo tanks. The EPA has made, and will continue to make, these materials available through <https://www.regulations.gov> and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it proposes to approve a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on Tribal Governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The State did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile

organic compounds.

Dated: October 19, 2023.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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